

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
ENTERGY NUCLEAR INDIAN POINT 2, LLC)	FCC File No. 0001242437
)	
Request for Waiver of Section 90.179(a))	
of the Commission's Rules)	

ORDER

Adopted: October 27, 2004

Released: October 28, 2004

By the Chief, Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau:

1. On March 20, 2003, Entergy Nuclear Indian Point 2, LLC (Entergy) filed a request for a waiver¹ of Section 90.179(a)² of the Commission's Rules, to permit Entergy to be eligible to utilize certain frequencies³ allotted to the Public Safety Services Pool⁴ in order to better serve the electricity needs of New York City and to coordinate its response in the event of an emergency.⁵ To the extent described herein, we waive the Commission's Public Safety Pool eligibility requirements,⁶ which will allow Entergy to operate on the requested frequencies. We find that grant of the instant waiver request will enhance Entergy's emergency communications capabilities at its nuclear facilities, ensure reliable electricity service to New York City, and avoid interference to public safety communications. Accordingly, we believe that this action will promote the public interest.

¹ Entergy's Request for Waiver of Section 90.179 (filed Mar. 20, 2003); *see also* FCC File No. 0001242437 (Waiver Request). On August 26, 2003, Entergy amended its waiver request to reiterate the need for dependable and immediate communications to provide electrical service to New York City, and to respond to emergencies. *See* FCC File No. 0001242437, Letter from James W. Palmer, SAIC/Entergy Services, Inc., to Wireless Telecommunications Bureau (Palmer Letter).

² 47 C.F.R. § 90.179(a) (persons may share a radio station only on frequencies for which they would be eligible for a separate authorization).

³ The requested frequencies are 453/458.7375 MHz and 453/458.8375 MHz. *See* FCC File No. 0001242437.

⁴ 47 C.F.R. § 90.20(c).

⁵ Waiver Request at 1.

⁶ Although Entergy requested waiver of Section 90.179(a), we note that Entergy's request would require a waiver of the Commission Public Safety Pool eligibility requirements and, therefore, as discussed in para. 2 *infra*, we treat the instant Waiver Request as a request for waiver of Section 90.20. 47 C.F.R. § 90.20(a) (eligibility criteria).

I. BACKGROUND

2. Entergy's nuclear plant facilities at Indian Point 2 and the facilities of a commonly-owned entity, Entergy Nuclear Indian Point 3, LLC, are located forty miles north of New York City.⁷ These facilities supply a substantial amount of the electrical power consumed in the New York metropolitan area.⁸ In 2001, Entergy acquired Indian Point 2 from Consolidated Edison, Inc. (Con Ed).⁹ As a condition to the transaction, Entergy indicates that it had to "relinquish to Con Ed" all industrial radio¹⁰ frequencies shared with Con Ed at Indian Point 2.¹¹ While Indian Point 3 is located adjacent to Indian Point 2, Entergy states that it would be very difficult for the facilities at Indian Point 3 to cover the daily needs of both facilities given that Indian Point 3's frequencies are already heavily utilized.¹² Moreover, Entergy indicates that additional capacity is needed to allow Entergy's security officials to better coordinate a response in the event of an emergency, such as a terrorist attack.¹³

3. Entergy contends that no viable frequency options are available in the Industrial/Land transportation and Business Service Pool (I/B Pool) below and above 470 MHz, and that the United Telecom Council (UTC), a certified I/B Pool frequency coordinator, identified the subject frequencies as potentially viable options that would satisfy Entergy's needs.¹⁴ These frequencies, however, are available only for Public Safety purposes according to Commission rules.¹⁵ Entergy therefore requested waiver of Section 90.179(a) of the Commission's rules so that it may operate base and mobile stations on the subject frequencies. The Association of Public Safety Communications Officials, International, Inc. (APCO), a certified Public Safety Pool frequency coordinator, supports Entergy's request for the use of UHF frequency pairs 453/458.7375 and 453/458.8375 MHz.¹⁶

4. As a general matter, under the Commission's Part 90 rules,¹⁷ entities are licensed on frequencies in the category or categories for which they meet the eligibility criteria. Section 90.20 of the Commission's rules contains the eligibility requirements for the use of frequencies in the Public Safety Services Pool.¹⁸ In general, those requirements restrict use of the frequencies listed in that section to governmental entities and persons or associations that have a direct role in providing emergency or medical services.¹⁹ A waiver of Section 90.20 of the Commission's rules is, therefore, necessary to permit Entergy to operate base stations on the subject frequencies. As a waiver of Section 90.20's eligibility requirements would obviate the need for a waiver of Section 90.179(a), we shall, on our own

⁷ Waiver Request at 1.

⁸ *See id.*

⁹ *Id.*

¹⁰ *See* 47 C.F.R. § 90.35.

¹¹ *See* Waiver Request.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.* at 2.

¹⁵ 47 C.F.R. § 90.20(c).

¹⁶ *See* FCC File No. 0001242437, a Letter from Michelle Fink, APCO International to Renee McIlwain, UTC (APCO Letter).

¹⁷ 47 C.F.R. Part 90.

¹⁸ 47 C.F.R. § 90.20.

¹⁹ *See* 47 CFR §§ 90.15, 90.20. These frequencies are also available for low power telemetry operations on a secondary basis. *See* 47 C.F.R. § 90.20(d)(27).

motion, herein treat Entergy's request as seeking a waiver of Section 90.20(a).

II. DISCUSSION

5. To obtain a waiver of the Commission's Rules, a petitioner must demonstrate either: (a) grant of the requested relief would be in the public interest, and the underlying purpose of the rule would be frustrated or not served by the application to the present case;²⁰ or (b) in view of unique or unusual factual circumstances, application of the rule would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.²¹ We find that granting Entergy a waiver of Section 90.20's eligibility requirements under the circumstances presented serves the public interest.

6. As an initial matter, we find that granting the request for the specified frequencies will not frustrate the underlying purpose of Section 90.20(a), which is to ensure adequate spectrum for public safety activities, and to avoid interference to such communications from incompatible services. We note that APCO, apparently believing interference would not be an issue for other users, approves of Entergy's proposed use of these frequencies.²² Further, no objection has been made by any other public safety frequency coordinator against Entergy's proposed use of these frequencies.²³ And, no evidence has been presented that authorizing Entergy's use of these frequencies would result in an inadequate supply of spectrum for the public safety community.

7. While Entergy indicates that, under normal circumstances, its proposal, if approved, could cause interference to incumbent users, it notes several distinguishing factors are present in the instant case, which show such concerns are unwarranted.²⁴ Entergy states that interference will be minimal as a result of the "unusual terrain situation" that exists at the plant.²⁵ Further, according to Entergy, Indian Point 2 is located on the eastern bank of the Hudson River, whose steep banks surrounding the plant will provide "terrain shielding" to the surrounding area.²⁶ Additionally, Entergy indicates that its transmitter site is 106 meters below average terrain, and its antennas would be only twelve meters above ground.²⁷ Also, the application lists a relatively small Kilometers radius (KMRA)²⁸ of only eight kilometers (*i.e.* five miles).²⁹ Moreover, there is only ten watts Effective Radiated Power (ERP) for both base and mobiles specified in the application.³⁰ Taken together, the technical parameters reflected in this case persuade us that authorizing Entergy's use of these frequencies would not be likely to result in interference to public safety communications.

8. Additionally, Entergy has demonstrated that there are no reasonable alternatives to accommodate its described needs. Entergy indicates that the UTC found no 450-470 MHz I/B Pool

²⁰ 47 C.F.R. § 1.925(b)(3)(i).

²¹ 47 C.F.R. § 1.925(b)(3)(ii).

²² See APCO Letter.

²³ Under 47 C.F.R. § 90.176, coordination of these frequencies requires that all public safety frequency coordinators be placed on notice of any proposed use of these frequencies.

²⁴ See Waiver Request at 2.

²⁵ *Id.* at 2-3.

²⁶ *Id.* at 3.

²⁷ *Id.*

²⁸ KMRA refers to the maximum authorized distance for mobiles from a center point (*i.e.* base station site).

²⁹ See FCC File No. 0001242437.

³⁰ *Id.*

frequency available in the congested New York metropolitan area.³¹ Entergy also notes that its existing equipment would not be compatible with frequencies outside the 450-470 MHz band.³² Therefore, to deny Entergy access to the requested frequencies would frustrate Entergy's ability to manage its communications system routinely and during emergencies. Such a result would be inconsistent with our recent decisions promoting efficient and flexible use of public safety frequencies.³³

9. We also find that a grant of the Waiver Request would be in the public interest because it would allow Entergy flexibility in managing the communication system at its nuclear facilities. We believe that two additional UHF frequency pairs for expansion of its existing system would enhance daily operations as well as improve communications among various emergency response departments at Entergy's nuclear facilities.³⁴ Moreover, grant of the requested relief would help avoid disruption that could impair Entergy's ability to provide safe, efficient and reliable electricity service to New York City.³⁵ Finally, grant of the Waiver Request would be consistent with Commission's efforts to promote Homeland Security.³⁶ Therefore, as we find no likely interference or reasonable alternatives, we conclude that waiving the specified eligibility requirements is warranted.

III. CONCLUSION

10. Because of our need to be attentive to Homeland Security concerns such as enhancing emergency communication capabilities at a nuclear plant, because Entergy's use of the requested frequencies would substantially help New York City in satisfying its need for reliable electricity, and because we anticipate no likely interference to any other user from Entergy's proposed use of the requested frequencies for its system, we find that a grant of Entergy's Waiver Request is warranted. We believe that granting the Waiver Request serves the public interest. By allowing efficient use of the subject spectrum, the action taken today will provide improved opportunities for communications by Entergy where no reasonable alternative exists.³⁷

I. ORDERING CLAUSES

11. IT IS ORDERED that pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Sections 1.925 and 90.20 of the Commission's Rules, 47 C.F.R. §§ 1.925, 90.20, the Waiver Request associated with the above-captioned application, FCC File No. 0001242437, filed by Entergy Nuclear Indian Point 2, LLC on March 20, 2003 and amended on August

³¹ Waiver Request at 2-3.

³² See Palmer Letter at 1.

³³ See, e.g., Dominion Virginia Power, *Order*, 19 FCC Rcd 12254 (PSCID 2004) (finding that grant of the requested waiver of Section 90.20(a)'s eligibility requirement serves the public interest in that it will provide improved opportunities for interoperable communications between public safety and a nuclear power plant facility); New York Stock Exchange, Inc., *Order*, 19 FCC Rcd. 2602 (PSCID 2004) (finding grant of New York Stock Exchange's (NYSE) request for waiver of Section 90.20(a)'s eligibility criteria is warranted in light of the absence of any interference to any other user from NYSE's proposed use of public safety frequencies for its paging system and the importance to the national economy of NYSE's use at its existing location and at a new backup location).

³⁴ See Waiver Request at 2-3; Palmer Letter at 2.

³⁵ *Id.*

³⁶ See Federal Communications Commission, Strategic Plan FY 2003-FY 2008, available at <<http://www.fcc.gov/omd/strategicplan/strategicplan2003-2008.pdf>> (*Strategic Plan*). One of the Commission's stated goals in the *Strategic Plan* is to promote Homeland Security by promoting effective communications services by and between public safety, public health, and other emergency and defense personnel in emergency situations.

³⁷ Indeed, the Spectrum Policy Task Force Report states that it is important to optimize and facilitate access to, and use of, the radio spectrum. See Spectrum Policy Task Force Report, ET Docket No. 02-135, at 15 (Nov. 2002).

26, 2003, IS GRANTED, as set forth above.

12. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 CFR §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Michael J. Wilhelm
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